IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 574 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJKUMAR RAMJIBHAI DHOLIYA PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 574 of 2001

MR ZUBIN F BHARDA for Petitioner No. 1

MR BD DESAI A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/04/2002

ORAL JUDGEMENT

1. Heard learned counsel Mr.Bharda appearing for the applicant. The applicant is the original accused against whom a criminal case No.5693/98 was registered on a complaint filed by Police Inspector, Navsari Town police

station vide Crime Register No.III-411/1998 dated 10th June, 1998. The accused after investigation was chargesheeted for the offences punishable under Sections 66 (1) (B) and 85 (1) (3) of the Bombay Prohibition Act.

2. On conclusion of the Trial, the learned Judicial Magistrate, First Class, Navsari, vide judgment and order dated 27th July, 1999 convicted the present applicant for the offences punishable under Section 66 (1) (B) and sentenced him to undergo S.I. for three months and also imposed fine of Rs.500/-. On account of default, he was further directed to undergo S.I. for two months. For rest of the charges he was acquitted by the Trial court.

3. Against the order of conviction recorded by the learned J.M.F.C. the applicant had preferred appeal in the Court of Sessions and the same was registered as Criminal Appeal No.48/99. By the impugned judgment dated 19th October, 2001, the learned Sessions Judge dismissed the appeal confirming the order of conviction recorded by the learned J.M.F.C.

4. After quoting some deliberation on behalf of learned counsel for the parties and on verifying the Records & Proceedings brought before this Court, the learned counsel appearing for the applicant has pointed out that the judgment of learned trial Judge has been signed and pronounced without application of mind and the Judge who has pronounced the judgment has not recorded the reasons for conviction.

5. The counsel has taken me through the entire proceedings drawn by the learned J.M.F.C. and he has successfully pointed out that the Judge who conducted the trial and has heard the counsel appearing for the accused and the learned A.P.P. was her predecessor in office. For pronouncement, the criminal case was posted for judgment in the month of May, 1999, but before he could pronounce the judgment he had left the charge, possibly, because of routine transfers. It is rightly submitted that the successor in office ought to have perused the record and should have offered an opportunity again to the parties, mainly the accused, and after hearing the arguments only judgment could have been recorded.

6. Certified copy of the judgment of the Trial Court is produced at page 8 and the same is a xerox copy of the original duly certified by the Court Registrar. I have also seen the original judgment which is in the Records & Proceedings brought before the Court. Without any hesitation it can be interfered and concluded that the

judgment prepared was ready for proposed pronouncement on 31st May, 1999. This very ready judgment has been signed and pronounced on 27th July, 1999 by the successor Presiding Magistrate. The learned J.M.F.C. by striking out the name of the then Magistrate and date of the proposed judgment and has put fresh date and the signature. Even the name of that Judicial Magistrate on efforts, is visible.

7. The appellate Court was not aware about this fact. It seems that neither the counsel appearing before the Court of Sessions nor the Presiding Judge of the Sessions Court have gone through the original Records & Proceedings while hearing the appeal preferred by the applicant accused. The learned appellate Judge ought to have remanded the matter back, considering the above stated facts, directing the learned J.M.F.C. to hear the parties and to record the findings afresh. The act of mechanically signing the ready judgment prepared by the predecessor is neither legal nor proper. The ultimate idea in the scheme of the Code is to do substantive justice and the pronouncement of judgment is not a mechanical delivery of order. The top Court in case of Surendra Singh & Ors. v. State of Uttar Pradesh reported in A.I.R. 1954 S.C. 194 has considered the "judgment" interpreted in Section 366 of Code of Criminal Procedure (old) and has considered the formal pronouncement for delivery of the judgment. It would be beneficial to quote some part of this judgment being relevant for the purpose. It is observed that :-

> "It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the Court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open Court. But however, it is done, it must be an expression of the mind of the Court at the time of delivery. We say this because that is the first judicial act touching the judgment which the Court performs after the hearing. Everything else up till then is done out of Court and is not intended to be the operative act which sets all the consequences which follow on the judgment in motion. Judges, may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have

been signed. The final operative act is that which is formally declared in Open Court with the intention of making it the operative decision of the Court. That is what constitutes the "judgment".

8. In the above referred decision, the Apex Court by referring two decisions namely Firm Gokal Chand v. Firm Nand Ram A.I.R. 1938 Privy Council 292 (A) and a Full Bench of the Calcutta High Court consisting of nine Judges in the year 1897 in Mahomed Akil v. Asadunnissa Bibee has ultimately held that :-

"Our conclusion is that the judgment which Kidwal J, purported to deliver on 5/1/1953 was not a valid judgment because the other member of the Bench died before it could be delivered.

The appeal is allowed and the order of the High Court which purports to be its judgment is set aside. As it is no longer possible for the Bench which heard the appeal and the confirmation proceedings to deliver a valid judgment we send the case back to the High Court for rehearing and delivery of a proper judgment."

9. The commentaries on the A.I.R. Criminal Procedure has also referred one decision reported in A.I.R. 1978 Madras High Court 1172 and other decision of Gauhati High Court reported in 1992 (2) Gauhati Law Reporter page 197, the ratio of these two decisions mentioned in the commentary also is relevant for our purpose. Of course, a decision in Parasram Shivlal v. Laxminarayan & Ors. reported in A.I.R. 1961 Madhya Pradesh page 8 says that:-

"I do not see how the merits of the judicial decision can at all be affected by the mechanical work of reading out. The notion that there is something possibly illegal in a successor doing certain things in connection with a case heard and decided by a Magistrate, comes out of the failure to distinguish between judicial acts which certainly cannot be delegated and must be done by the very magistrate who hears the case, and ministerial or mechanical acts which could be done by him or his successor, though, naturally, it would be more convenient if he did it himself."

10. But this decision deals with a case where the Judge who was to delivered the judgment had signed the judgment and mere formality to pronounce the same was to be observed. So this ratio would not help the prosecution, even otherwise this decision has only persuasive value. In the case before the Madhya Pradesh High Court the question of legality of the judgment which was written by the trying magistrate but was pronounced by his successor in office was under scrutiny. The appeal before the Madhya Pradesh High Court was an appeal against acquittal by the complainant. The Judicial Magistrate, First Class, Bhopal, had written the judgment but the same was delivered on the next day by his successor. In that case the formal pronouncement was left on the next day. While Civil Procedure Code expressly provides for many such situations. The Criminal Procedure Code is more general and silent in this regard. However, the Apex Court has considered all important relevant aspects in the decision reported in Surendra Singh & Ors. v. State of Uttar Pradesh (Supra). The decision of the Apex Court, it seems, was not brought to the notice before the bench of the Madhya Pradesh High Court when the same was dealing with the above referred decision.

11. At first sight, this set of fact looks in the form of procedural irregularity but the say of Mr.Bharda shall have to be accepted, that the same is very material one. Thus the irregularity is violative of fundamental principles of our criminal jurisprudence.

12. The judgment and order recorded by the learned J.M.F.C. Navsari, dated 27th July, 1999 and the judgment and order confirming the conviction of the offences punishable under Section 66 (1) (B) of Bombay Prohibition Act dated 19th October, 2001 are hereby quashed and set aside and the entire matter is remanded back to the learned J.M.F.C. Navsari, with a direction to offer an opportunity of hearing to the counsel appearing for the accused and the learned A.P.P. and after hearing the arguments on merits, he shall pronounce the judgment.

13. It is clarified that the judgment of the predecessor officer of the Court should be independent and without being influenced by the earlier findings recorded by his predecessor and the Court of Sessions as if no formal finding has been recorded by either of this Court.

14. The revision application is, therefore, partly allowed. Fine if paid be refunded to the petitioner

accused. Records & Proceedings brought before the Court be sent forthwith. The case being very old the learned J.M.F.C. should hear the matter expeditiously, preferably within six months. Direct Service is permitted.

(C.K. Buch, J.)

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